

Internal Revenue Service

Department of the Treasury

District
Director

1100 Commerce St., Dallas, Texas 75242

Date: Oct 17 1997

Employer ID Number:

Person to Contact:

Telephone Number:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

The information submitted indicates you were incorporated

Your purposes, as stated in your Articles of Incorporation, are to,

"fix assessments (or charges) to be levied against Tracts, Lots, and Building Sites and establish services without the obligation to be provided for the benefit of the Members;"

"Enforce and all covenants, conditions, restrictions and agreements applicable to the Property;"

"...to do any other thing of a similar nature that will promote the common benefit and enjoyment of the Owners of the Property..."

Your stated powers include,

"supervise all agents and employees of the Association hereunder and to see that their duties are properly performed;"

"manage, control, operate, maintain, preserve, repair and improve the Property subsequently acquired by the corporation, or any property owned by another for which the corporation, by rule, regulation, Declaration, or contract, has a right or duty to provide such services;"

"provide or contract for services benefiting the Property including, without limitation or obligation, any and all supplemental municipal services as may be necessary or desirable;"

"contract with other associations, organizations, or groups to provide for the maintenance of property adjacent or adjoining the Property;" and,

"spend money for the improvement or maintenance of property in the vicinity of the Property subject to the Declaration, or adjacent or adjoining such property."

The Declaration of Covenants, Conditions, and Restrictions (Declaration) states that the Declarant "desires to provide for the creation of certain landscape and monument easements and the maintenance thereof, a common scheme for providing street lights upon certain major thoroughfares within the Property and, at the option of a property owner's association, a scheme for providing private security patrols along such major thoroughfares, and to this end desires to subject the Property to the covenants, easements, conditions, restrictions, reservations, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each owner of any part thereof..."

The Declaration also states that membership in the association is automatic, will follow the legal ownership interest of the property and may not be separated from such interest.

The Declaration provides for four classes of membership as follows (the number of votes in each class, as estimated by your representative, are shown in parenthesis):

- Class A: Owners of Commercial Land other than Declarant ([redacted] votes)
- Class B: Owners of Residential Land other than Declarant and owners of lots ([redacted] votes)
- Class C: Owners of Lots or their homeowner's association ([redacted] votes)
- Class D: Declarant ([redacted] votes)

[redacted] began as a joint venture composed of [redacted], [redacted], and [redacted]. The current Declarant is [redacted], successor in interest to [redacted]. The area covers [redacted] acres of land, consisting of residential and commercial properties. The map you furnished shows that more than half of the acreage remains the property of [redacted] and the area is still being developed. You own no property, only easement rights/set backs.

Your officers are appointed by [redacted]. These individuals are also the officers of [redacted], the homeowner's association serving [redacted] (and your Class C member). You provide landscaping and maintenance for properties owned by [redacted] and [redacted].

██████████, as well as property privately owned by commercial entities, the school district, nonprofit organizations, and easements/set backs. According to the highlighted map provided, the only public property you maintain are the streets running through the development that you have dedicated to the county, however it appears that land owned by the public school district should also be considered public property.

Your representative states that the imposition of land use standards by the developer, throughout the development and along its periphery, and the maintenance of a landscape plan constitute a significant public benefit.

The income statement provided for the ████████ calendar year shows that your expenses are for landscape maintenance, street lights, and administration. There are no expenses for private security patrols.

Section 501(c)(4) of the Internal Revenue Code provides exemption for:

"Civic Leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare..."

Section 1.501(c)(4)-1 of the regulations provides, in part, as follows:

"(a)(1) In general. A civic league or organization may be exempt as an organization described in section 501(c)(4) if -

- (i) It is not organized or operated for profit; and
- (ii) It is operated exclusively for the promotion of social welfare."

Revenue Ruling 69-280, 1969-1 C.B. 152, holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of homes of members who own houses in a development is not exempt as a social welfare organization under section 501(c)(4) of the Code. The Revenue Ruling concludes that the organization is operated primarily for the private benefit of members and any benefit to the community is not sufficient to meet the requirement that a section 501(c)(4) organization be operated primarily for the common good and general welfare of the people of the community.

Revenue Ruling 72-102, 1972-1 C.B. 149, holds that a nonprofit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for use of the residents is exempt under section 501(c)(4) of the Code. The Revenue Ruling concludes that by administering and enforcing covenants, and owning and maintaining certain non-residential, non-commercial properties of the type normally owned and maintained by municipal governments, this organization is serving the common good and the general welfare of the people

of the entire development. The Revenue Ruling also states that even though the activities of the organization serve to preserve and protect property values in the community, these benefits that accrue to the property owner-members are incidental to the goal to which the organization's activities are directed, the common good of the community.

Revenue Ruling 74-17, 1974-1 C.B. 131, holds that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code. The Revenue Ruling states, as part of the result, that condominium ownership necessarily involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners. In reaching this conclusion, the Revenue Ruling cites Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (4th Cir. 1962), which held that a cooperative housing corporation was not exempt as a social welfare organization under section 501(c)(4) since its activities were of the nature of an economic and private cooperative undertaking. It also cites Revenue Ruling 65-201, 1965-2 C.B. 170, which holds that a cooperative organization operating and maintaining a housing development and providing housing facilities does not qualify for exemption from Federal income tax under section 501(c)(12), or any other provision of the Code.

Revenue Ruling 75-286, supra, holds that a nonprofit organization with membership limited to the residents and those owning property or owning businesses within a city block and formed to preserve and beautify the public areas in the block, thereby benefiting the community as a whole as well as enhancing the members' property rights, may qualify for exemption under section 501(c)(4) of the Code. The Revenue Ruling states that the activities of the organization consist of paying the city government to plant trees on public property within the block, organizing the residents to pick up litter and refuse in the public streets and on public sidewalks within the block. The Revenue Ruling makes clear that the organization's activities promote social welfare within the meaning of section 501(c)(4) because they beautify and preserve public property in cooperation with local government.

[REDACTED] began as raw land purchased by the original Declarant, and developed as a residential and commercial subdivision. The land is sold parcel by parcel and the purchasers of the land automatically become members of the organization. Membership of owners is mandatory and members are assessed annually. [REDACTED]

[REDACTED], owns no land, although it is responsible for the setbacks along all thoroughfares.

With regard to the maintenance of common areas, the Association is similar to the organization described in Revenue Ruling 74-17, *supra*, which provides for the maintenance and care of

Common areas owned in common by the unit members. The Association owns no land, it merely holds property in easement. The property landscaped and maintained in [REDACTED] is owned by (1) [REDACTED], (2) other private parties, or (3) [REDACTED]. Privately owned land is not considered to be a "common area" as that term is used in Revenue Ruling 72-102. By maintaining these areas, the Association is necessarily providing a private benefit for its members.

Although not providing exterior maintenance for the members' homes, the Association is also similar to the organization discussed in Revenue Ruling 69-280, supra, in that it is operated primarily for the private benefit of its members by maintaining the property of members. The significant presence of [REDACTED], which owns more than half of the property in [REDACTED], and controls [REDACTED] [REDACTED], as well as [REDACTED], is evidence of the primary business benefit to that entity. The only liability of the Association for the year ended [REDACTED], was \$[REDACTED] due to [REDACTED] for landscape installation and maintenance.

You are not like the entity in Revenue Ruling 75-286 because you provide your services on property that is the responsibility of private property owners, not public property. Property held in easement is the responsibility of the adjacent private property owner. Your recreational facilities are not owned by the Association or the public, but are the property of [REDACTED] or [REDACTED]. It is very clear that the primary benefit of this organization is to its members, and your controlling member is [REDACTED]. The activities of this organization enhance the commercial appeal of [REDACTED] and further the business interests of [REDACTED].

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(4), and you are required to file Federal income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

Ellen Murphy

Ellen Murphy
Acting, District Director

Enclosures:
Publication 892
Form 6018

cc: 

